

The opinion in support of the decision being entered today is  
*not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WILLIAM D. MORGAN, MICHAEL A. MORGAN,  
and MICHAEL S. GALLANT

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Appeal 2006-2384  
Application 10/003,037  
Technology Center 1700

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Decided: July 30, 2007

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Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and  
CATHERINE Q. TIMM, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 2, 5, 6, 9-15, 28, 29, and 32.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

## I. BACKGROUND

The invention relates to a covering system and methods relating to venting the covering system. Claims 1,<sup>2</sup> 28, and 32 are illustrative of the subject matter on appeal:

1. A covering system comprising:
  - a first membrane a top surface and an opposing bottom surface;
  - a first flotation member coupled to the first membrane, wherein the first flotation member includes a first float and a first float compartment membrane having an inside surface and an opposing outside surface, and wherein the first float compartment membrane is coupled to the first membrane; and
  - a first plurality of gas-relief passageways positioned either:
    - within the first float compartment membrane and extending between the inside and opposing outside surfaces, or

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<sup>1</sup> An amendment was filed concurrently with the Notice of Appeal canceling claim 33 (Amendment filed November 21, 2005). This Amendment was entered and, therefore, claim 33 has been canceled (Advisory Action of Dec. 22, 2005).

<sup>2</sup> Appellants filed an amendment with the Brief which inserts "having" into the first clause of claim 1 "in order to correct its inadvertent omission from the claim 1 amendment of the March 22, 2005 response." (Br. 1 at ¶ IV; see also Amendment filed December 20, 2005). The Examiner should enter the amendment upon receipt of the application so that the inadvertent omission is corrected.

within the first membrane, extending between the top and opposing bottom surfaces, and adjacent to the first flotation member;

wherein at least one of the gas-relief openings within the first plurality is structured so that gas flows unobstructed through it when the system is used.

28. A venting method comprising:

coupling a first membrane to a first flotation member, wherein the first flotation member includes a first float and a first float compartment membrane, and wherein the coupling includes coupling the first float compartment membrane to the first membrane, the first membrane having a top surface and an opposing bottom surface, and the first float compartment membrane having an inside surface and an opposing outside surface;

forming gas-relief passageways either:

within the first float compartment membrane and extending between the inside and opposing outside surfaces, or

within the first membrane, extending between the top and opposing bottom surfaces, and adjacent to the first flotation member; and

elevating at least a portion of the first membrane;

so as to cause the first membrane to float when placed over a body containing some liquid; and

so that gas from the body is directly vented to atmosphere through at least one of the gas-relief passageways.

32. A method of venting gas from a body containing some liquid, comprising:

placing a covering system over the body, the covering system comprising:

a first membrane having an outer edge and a width;

a first flotation member coupled to the first membrane, wherein the first flotation member includes a first float and a first float compartment membrane, the first float has a width that is not more than twenty-five percent of the width of the first membrane and a first float compartment membrane, and the first float compartment membrane is coupled to the first membrane;

elevating portions of the first membrane above the body; and

positioning the covering system to allow gas from the body to vent directly to atmosphere around the outer edge of the first membrane.

The Examiner relies on the following prior art references to show unpatentability:

Wilson	US 4,438,863	Mar. 27, 1984
Gerber	US 4,503,988	Mar. 12, 1985
Gagle	US 4,678,375	Jul. 7, 1987
Morgan	US 5,562,759	Oct. 8, 1996

Reference designated "C1," Proposals for Pond Membrane, November 8, 1984.

Reference designated "C2," Color copy of Lemma brochure published more than one year prior to the filing date (see Exhibit 6 of the evidence appendix accompanying the Brief; Information Disclosure Statement of Feb. 6, 2004).

Reference designated "C4," Depiction of structure in public use more than one year prior to the filing date (see Exhibit 5 of the evidence appendix accompanying the Brief; Information Disclosure Statement of Feb. 6, 2004).

The rejections maintained by the Examiner are as follows:

1. Claims 1, 2, 5, 6, 9-15, 28, 29, and 32 are rejected under 35 U.S.C. § 103(a) as unpatentable over the Appellants' own admission of prior art (C2 and C4) in view of Gerber;
2. Claims 1, 2, 5, 6, 11-13, 28, 29, and 32 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wilson in view of Morgan; and
3. Claims 9, 10, 14, and 15 are rejected under 35 U.S.C § 103(a) as unpatentable over Wilson and Morgan, further in view of C1.

## II. DISCUSSION

### A. Issue

The issue before us is: Has the Examiner properly established a prima facie case of obviousness within the meaning of 35 U.S.C § 103(a)?

### B. Facts

The following Factual Findings are supported by a preponderance of the evidence:

1. Gerber and C4 describe and illustrate a cover system including a membrane and a flotation member with a float and float compartment member as required by claim 1 (e.g., Gerber, col. 7, ll. 55-68; C4 Fig.)
2. Neither Gerber nor C4 include a plurality of gas-relief passageways positioned as required by claims 1 and 28.
3. C2 describes a cover system including blocks of insulation (floats) sealed between membrane sheets to form casings. The casings are laced together to leave an opening between adjacent casings through which gases can escape. (See C2, p. 2, cols. 1-3, and the figure on p. 2.)

4. The opening between the adjacent casings is between membranes, not “within” a membrane (C2, figure on p. 2).
5. To anchor the cover of C4, the cover is either placed down in an anchor trench (about 3 feet deep covered with earth) or is battened to the top of a concrete ringwall. Venting is neither discussed nor depicted.
6. Wilson describes a gas venting cover including membrane 10 and upper and lower flotation blocks 22. Each block is encased by an outer cover or sleeve 28. Sets of blocks define passages 26 through which gas may pass into passage 32 (Wilson, col. 3, ll. 26-48; col. 4, ll. 5-10; Fig. 4).
7. Wilson suggests including vent openings 66 in the portion of the cover between the outer edge and the sump 16 as shown in Figure 2 (Wilson, col. 5, ll. 26-32; Fig. 2).
8. The outer edges of the cover 10 are “attached in fluid-tight relationship to the upper part of the container 12.” (Wilson, col. 3, ll. 21-25).
9. Morgan describes a gas collection system with casings similar to those of C2. Gas may escape between casings as in C2.

#### C. Principles of Law

The examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). In order to establish a prima facie case of obviousness, the examiner must show that each and every limitation of the claim is described or suggested by the prior art or would have been obvious based on the

knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

D. Analysis

We agree with Appellants that the Examiner has failed to identify a teaching or suggestion in the art of gas-relief passageways meeting the requirements of claims 1 and 28 (Br. 5 and 13). In the rejections of claims 1 and 28, the Examiner relies upon C2 and Morgan, respectively, as teaching the claimed passageways. Specifically, the Examiner relies upon a space between the casings of C2 and the seams of Morgan as the claimed passageways. But as claimed, the passageways must be positioned “within” a membrane (within either the first float compartment membrane or the first membrane). The spaces between the casings of C2 and between the seams of Morgan are not “within” a membrane as claimed (FF 4 and 9).

The Examiner did not specifically discuss claim 32 in the rejection over the admitted prior art (C2 and C4) in view of Gerber (Answer 3-5). However, in response to Appellants’ contention that the prior art contains no suggestion of “positioning the covering system to allow gas from the body to vent directly to atmosphere around the outer edge of the first membrane,” the Examiner contends that the cover of C4 “is capable of this venting,” because “the membrane in C4 is described, alternately, as ‘battened to the top of a concrete ring wall’” and “battening is not a gas tight seal. (Webster Dictionary meaning of battening is to fasten with a thin narrow strip of lumber).” (Answer 13).

Claim 32 is a method claim which affirmatively requires a step of positioning the covering system to allow venting “around the outer edge of the first membrane.” There is no convincing evidence that venting around

the edge of the C4 membrane either inherently takes place or is suggested. C4 describes a perimeter anchor system in which the cover is buried within a trench or battened to a ringwall (FF 5). There is no depiction or discussion of venting (FF 5). There is simply little evidentiary support for the proposition that battening does not, or is not intended to, result in a fluid tight seal.

The Examiner further contends that openings 66 in membrane 10 of Wilson vent gas as claimed. However, the cover 10 of Wilson is fluid tight around the outer edge of the membrane as the edge is “attached in fluid-tight relationship to the upper part of the container 12” (FF 8). Therefore, Wilson does not teach or suggest positioning the covering system to allow venting “around the outer edge of the first membrane” as claimed.

### III. CONCLUSION

The evidence as applied by the Examiner does not support either the rejection over the admitted prior art in view of Gerber or the rejection over Wilson in view of Morgan. Moreover, C1 as applied by the Examiner does not remedy the deficiencies of the rejection over Wilson in view of Morgan.

### IV. DECISION

The decision of the Examiner to reject claims 1, 2, 5, 6, 9-15, 28, 29, and 32 is reversed.

REVERSED

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Application 10/003,037

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